

Consultation on the Review of
Code of Practice for Employment Agencies (2023)

Submission from the Equal Opportunities Commission

Introduction

In recent years, over 75% of sexual harassment complaints received by the Equal Opportunities Commission (EOC) were employment-related.¹ This paper aims to give views and recommendations of the EOC for the Code of Practice for Employment Agencies (CoP) promulgated by the Labour Department (LD) on strengthening the awareness of sexual harassment among employment agencies, job-seekers and employers to prevent and combat sexual harassment from the recruitment process and during formal employment.

Reminding Agents or Staff of Unlawful Sexual Harassment against Employment Agency's Service Users

2. Under the Sex Discrimination Ordinance (SDO), it is unlawful for someone who (a) operates an employment agency (EA); or (b) is a member of the staff of an EA, to sexually harass another person in the course of offering to provide, or providing, any of the EA's services to the second-mentioned person.² Apart from personal liability to be borne by the concerned agents or staff, employers of such agents or staff may be held vicariously liable for their unlawful acts of sexual harassment in the course of employment, even if they had no knowledge of it.

EOC's recommendation

3. The EOC recommends that reminders should be stipulated in the CoP to point out sexual harassment by agents or staff of an EA against the EA's service users is unlawful under the SDO, which could lead to personal and vicarious liabilities.

¹ EOC E-News Issue 264, 26 August 2021 (<https://www.eoc.org.hk/en/ENews/264>)

² Section 24(4) of SDO (Cap. 480)

Promoting Job-Seekers’ and Employers’ Understanding of their Rights including Protection from Sexual Harassment

4. At the same time, it is unlawful, under the SDO, for someone, in relation to employment by him/her at an establishment in Hong Kong, to sexually harass another person, who is seeking to be employed by him/her, in other words, a job-seeker.³ The same protection applies to situation where the harasser is a person employed by someone who is recruiting.⁴ While sexual harassment at the workplace between parties with formal employment relationship or as workplace participants would breach the law,⁵ job-seekers, as well as people seeking or undergoing training which would help fit them for employment, are protected from being sexually harassed too.⁶ Likewise, the SDO renders sexual harassment against an employer by a job-seeker unlawful.⁷

5. In particular, job-seekers or employees like foreign domestic helpers (FDHs) are prone to sexual harassment as they have to work in private accommodation and live in the same premises with their employers. Compared with local job-seekers or employees, FDHs might not have the same resources or ease in seeking clarification about their rights. Previous questionnaire survey aiming to enhance FDHs’ awareness on their rights to have a sexual harassment free work environment found that over 60% of the respondents, who were mostly Filipino and Indonesian, had never received any information on anti-sexual harassment.⁸ Apart from local employees, in the employment field, the EOC also received sexual harassment complaints from FDHs. In March 2023, the EOC assisted a FDH to seek redress by taking the sexual harassment case against her former employer to the court.⁹

EOC’s recommendation

6. The CoP, therefore, should advise EAs, as the trusted intermediary and primary contact between employers and job-seekers, to be aware of the prevention of sexual harassment, starting from the recruitment process, from the perspectives of both job-seekers and employers who are

³ Section 23(1) of SDO (Cap. 480)

⁴ Section 23(3) of SDO (Cap. 480)

⁵ Sections 23 and 23A of SDO (Cap. 480)

⁶ Section 24(3) of SDO (Cap. 480)

⁷ Section 23(11) of SDO (Cap. 480)

⁸ EOC’s survey “Sexual Harassment and Discrimination in Employment – Questionnaire Survey for Foreign Domestic Workers” (<https://www.eoc.org.hk/en/policy-advocacy-and-research/research-reports/2014-2>)

⁹ EOC’s press release, 1 March 2023 (<https://www.eoc.org.hk/en/PressRelease/Detail/18527>)

hiring, and/or offering training or making arrangements for the provision of facilities for training.

7. In addition, the CoP should require EAs to take on a key role in providing information to job-seekers, especially non-local ones like FDHs, on their legal protection entitled and the ways to stop and report improper and unlawful conduct of sexual nature against them during the recruitment process and formal employment.

8. As for employers of FDHs who are very often families or individuals not familiar with employment or legal matters, the EOC recommends that the CoP should require EAs to bring discrimination and harassment especially sexual harassment, which are highly relevant to employment, to these employers' attention, for example, in a form of information pack which will serve as a call to action to these employers for acquiring further details from appropriate parties like the EOC.

9. In this regard, the LD may find it useful to consult relevant groups of stakeholders so as to define proper scope of content in such information pack or types of publicity materials, relating to discrimination and harassment, to be displayed or dispatched within the EAs' premises.

Equal Opportunities Commission

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